IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

Crl.MC.No. 3647 of 2004(A)

CC.1327/2001 of JUDL. MAGISTRATE OF FIRST CLASS, MALAPPURAM

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PETITIONER:

DR.P.K.DINESH, MEDICAL CENTRE, VAZHAKKAD, MALAPPURAM DISTRICT.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS:

1. **STATE REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

2. **ANAKKOTTUKUNDIL LEELA, W/O.SREEDHARAN, MUNDUMUCHI, VAZHAKKAD, MALAPPURAM DISTRICT.**

BY PUBLIC PROSECUTOR SRI.NOBLE MATHEW
ADV.SRI.P.SAMSUDIN FOR R2

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 04/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.KOSHY, J.

Criminal R.P.No.3647 OF 2004 (A)

Dated this the 4th day of December, 2007

O R D E R

Petitioner is the 2nd accused in C.C.No.1327/2001 on the file of Judicial First Class Magistrate Court, Malappuram, a medical practitioner running a hospital named “Medical Centre” at Vazhakkad at Malappuram District. In his hospital, 2nd respondent was treated. She approached the 1st accused who was employed in the hospital for some treatment and scanning was advised and she was operated. Thereafter the pain was increased and she was taken to Medical College Hospital, Kozhikode, and according to her, intestine had ruptured due to the careless treatment by the 1st accused. But a reading of the allegation shows that she was treated not by the 2nd accused but by the 1st accused. According to the petitioner, he has no role in the treatment that he was the proprietor of the hospital. 1st accused was employed by him an it is also contended that there was no negligence on the part of the 1st accused. Case was instituted on a complaint by the 2nd respondent. Earlier he approached this Court by filing Crl.M.C.No.7972/2001. That

was rejected without prejudice to his defences. Therefore he obtained a document from the Medical Board, as the matter was examined by a panel of Doctors as per the direction of the Government of Kerala, which is produced by Annexure 4 dated 20.9.1993, and it was found that there was no negligence on the part of the hospital. It is true that as held by the Supreme Court in ***Mohanan v. Prabha G. Nair (2004 (2) KLT 160 (SC))***, if death is allegedly caused by the culpable negligence of the doctor, complaint cannot be quashed at the threshhold when culpability can be established only by proper analysis by expert evidence. In this case the police could not file a complaint as the panel of doctors submitted that there is no negligence. Hence private complaint was filed. In any event as far as the petitioner, 2nd accused is concerned, he is only the proprietor of the hospital and criminal liability cannot be justified on him.

2. Supreme Court in ***Jacob Mathew v. State of Punjab (2005 (3) KLT 965)*** held that so long as the doctor follows the practice acceptable to medical profession in the absence of clear evidence, complaint against the medical practitioner shall not be entertained unless prima facie

evidence is adduced by producing to show that there was negligence on the part of the accused doctor. Here panel of independent doctors certified otherwise. In any event, here no prima facie evidence was produced to attribute negligence on the part of petitioner. Hence the case shall not have been entertained. In this case as far as the petitioner is concerned, I am of the opinion that there is no criminal liability on his part and I am not considering the question of civil liability which is to be decided on a different answer. Counsel for the petitioner also stated that even though this complaint is quashed, considering the difficulties expressed by 2nd respondent, petitioner will pay Rs.10,000/- within one month to the 2nd respondent without accepting the liability. I record the above undertaking. C.C.No.1327/2001 on the file of Judicial First Class Magistrate Court, Malappuram as against the petitioner is quashed. With the above directions this Criminal M.C. is allowed.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.R.P. OF 1998

O R D E R

4th December, 2007